

## REMARKS

In view of the following remarks, reconsideration and further examination are respectfully requested.

### *Status of all of the Claims*

Below is the status of the claims in this Application.

1. Claims pending: 22-42.
  - a. Claims withdrawn from consideration but not canceled: 37-39.
2. Claims canceled without prejudice: 1-21.

It is believed that the above-identified claims are supported by the application as originally filed.

### *Restriction Requirement*

In the Office Action, restriction was required. Claims 37-39 were withdrawn from consideration as being directed to a non-elected invention.

### *Proposed Claim Objection*

In the Office Action, claim 42 was objected to under 37 CFR 1.75 as being a substantial duplicate of claim 40. In response, Applicants respectfully submit that claim 42 recites a quantitatively determining step and claim 40 recites a qualitatively determining step. Such a difference in claim language between these two claims means that the scope of the subject matter being claimed in these two method claims is different enough that the two claims are not substantial duplicates of each other. Thus, Applicants respectfully submit that claim 42 should not be objected to under 37 CFR 1.75 as being a substantial duplicate of claim 40.

### *Claim Rejections*

#### *Rejection of Claim 26 Under 35 USC 112, Second Paragraph*

Claim 26 was rejected under 35 USC 112, second paragraph, as being allegedly indefinite due to the “average distance between elevations” claim language as not being clear. In response, Applicants note that this claim language refers to the average distance between the peaks of two adjoined elevations as more fully described in the paragraph starting near the bottom of page 3 of the specification as filed. Applicants respectfully submit that claim 26 is not indefinite since the above-referenced claim language is in fact clear in view of the teachings of Applicants’ specification. Accordingly, Applicants respectfully submit that the rejection of claim 26 has been traversed.

#### *Rejection of Claims 22-25, 29-36 and 40-42 Under 35 USC 102(b)*

In the Office Action, claims 22-25, 29-36 and 40-42 were rejected under 35 USC 102(b) as being anticipated by Markart (US Patent 6,441,898). It is believed that claims 22-25, 29-36 and 40-42 are allowable over the Markart patent.

Applicants’ independent claim 22 calls for a hydrophobic structured surface in an area around the application zone (emphasis added). The hydrophobic structured surface as called for by Applicants’ claim 22 is discussed in detail in Applicants’ specification in the paragraph starting near the bottom of page 2 and continuing to the top of page 4, and the advantages of such a structured surface are set forth therein.

It’s not clear from a reading of the Office Action how this limitation from Applicants’ claim 22 is being read on the Markart patent’s disclosure. In other words, Markart does not appear to teach a hydrophobic structured surface in an area around the application zone. Further, there is no suggestion in Markart to provide a hydrophobic structured surface in an area around the application zone. Accordingly, Markart clearly does not anticipate Applicants’ independent claim 22. Further, since claims 23-25 and

29-36 include all the limitations of independent claim 22, these claims are also not anticipated by the Markart patent.

Method claims 40-42 call for applying a sample liquid to a test element having a number of features, one of which is that it has a hydrophobic structured surface at least in an area around the application zone. Accordingly, claims 40-42 also are not anticipated by Markart because these claims also recite a hydrophobic structured surface in an area around the application zone. Thus, Applicants respectfully submit that the rejection of claims 40-42 as being anticipated by the Markart patent has also been traversed.

#### *Rejection of Claims 26-28 Under 35 USC 103(a)*

Claims 26-28 were rejected under 35 USC 103(a) as being obvious in view of the Markart patent. It is believed that claims 26-28 are allowable over the Markart patent.

In the Office Action, the Examiner has alleged that Applicants have merely set forth in claims 26-28 the subject matter resulting from a mere optimization of a result-effective variable to achieve a desired fluid flow speed and turbulence. However, Applicants respectfully submit that claims 26-28 set forth the characteristics of their claimed hydrophobic structured surface and that Markart does not disclose hydrophobic structured surfaces in an area around the application zone. Accordingly, claims 26-28 cannot be construed as merely setting forth optimized result-effective variables since Markart does not disclose such a hydrophobic structured surface at all. Accordingly, Applicants respectfully submit that the rejection of claims 26-28 as being obvious in view of the Markart patent has been traversed.

#### *Conclusion*

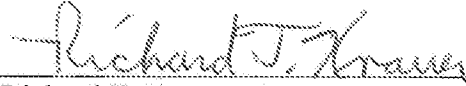
It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion. In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and an

early notice of allowance is earnestly solicited.

If after reviewing this response the Examiner feels that any issues remain which must be resolved before the Application can be passed to issue, the Examiner is invited to contact the undersigned representative by telephone to resolve such issues.

Respectfully submitted,

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Richard T. Knauer, Reg. No. 35,575  
Roche Diagnostics Operations, Inc.  
9115 Hague Road  
Indianapolis, IN 46250-0457  
Telephone No.: (317) 521-7464  
Facsimile No.: (317) 521-2883